IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 202 of 2006

Shri Dalvi Baburao Vitthal
and Ors. ... Appellants

V/s

Nikam Baban Shankar and Ors...Respondents

Shri Sanjay Kshirsagar for Appellants
Shri S.A.Sawant for Respondent no.2

CORAM:S.R.SATHE,J.

DATED:21st March 2006

P.C.:-

1. Heard both the learned Advocates.

2. The dispute between the parties is in respect of suit lands bearing block Nos. 66, 668 and 680 situated at village Chinchoshi, Taluka Khed, District Pune. The present Appellants are the heirs of Mahadeo R. Nikam, plaintiff in Regular Civil Suit NO.11 of 1979. It was plaintiff's case that defendants Baban S. Nikam and others had not concern with the said land but they

started obstructing plaintiff's possession. He, therefore, filed suit for permanent injunction against the defendants. However, subsequently by virtue of amendment he also sought declaration and possession of the suit land. the defendants contended that plaintiff agreed to sell the suit land to them and accordingly executed Sathe khat after accepting consideration of Rs.6,000/-. According to the defendants they were put in possession by way of part performance. In fact admittedly the present defendants had also filed Regular Civil Suit NO.40 of 1981 against the original plaintiff Mahadeo Nikam for specific performance of agreement to sell dated 21-9-1977 and the same has been decreed in their favour. The original plaintiff Mahadeo Nikam or his heirs did not file any second appeal though the decree for specific performance was confirmed by the court of 7th Additional District Judge, Pune.

3. Shri Khsirsagar, learned Advocate for the Appellants strenuously argued before me that the courts below have not properly appreciated the evidence on record and have wrongly held that the plaintiff has failed to prove his title to the suit land and finding recorded by the first Appellate court that the plaintiff's suit for declaration is not in time is not legal and correct.From the perusal of the judgment of the first appellate court it is very clear that the courts have rightly considered the entire evidence on

record and corectly held that the claim for declaration was barred by law of limitation. The plaintiff has failed to prove his possession of the suit land on the date of the suit. Both the Courts below have held that the present Respondents are entitled for decree for specific performance. The said decree has acquired finality. Thus it is very clear that there is no substantial question of law involved in the present matter.

4. Hence the appeal is dismissed in limine.

(S.R.SATHE,J.)